

**In re David Daniel Akerib
and Vivian Naomi Akerib 19-22276
Transcript Dated August 28, 2019**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 19-22276-shl
DAVID DANIEL AKERIB and . Chapter 11
VIVIAN NAOMI AKERIB, . 330 Quarropas Street
Debtors. . White Plains, NY 10601
Wednesday, August 28, 2019
11:30 a.m.

TRANSCRIPT OF LOSS MITIGATION WITH HSBC BANK USA NA, WITH
RESPECT TO 5 FOSSE COURT, RAMAPO, NEW YORK 10952-4533;
LOAN ENDING 0063 [11]
BEFORE THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 (Proceedings commence at 11:30 a.m.)

2 THE CLERK: Akerib.

3 THE COURT: Akerib? Is that correct?

4 THE CLERK: Yes. 19-22276, David Akerib and Vivian
5 Akerib.

6 MS. TIRELLI: Your Honor --

7 UNIDENTIFIED: 19-22276, David Akerib.

8 UNIDENTIFIED: I'm sorry, Your Honor. I just have to
9 get my documents.

10 THE COURT: No worries.

11 MS. TUROFSKY: All right. Deborah Turofsky, with
12 Gross Polowy, appearing on behalf of the secured creditor, HSBC
13 Bank.

14 MS. TIRELLI: Good morning, Your Honor. Linda
15 Tirelli on behalf of the debtors, Mr. and Mrs. Akerib.

16 This is a case, Your Honor, where, in the course of
17 this bankruptcy, apparently an appeal went through in the state
18 court. I guess the foreclosure now has been returned. And so,
19 you know, everyone's best interest right now is to try to
20 resolve this, and I think we're in the correct place to do it.

21 The last time we were here, my understanding on 6/26
22 was that opposing counsel said she needed clarification on some
23 documents. What I got was a request on July 8th asking for my
24 client's 2011 tax returns. That took a little digging, but we
25 did turn over what we had on the 8th of August. And then on

1 the 21st of August, I was asked for basically almost a whole
2 new packet. They wanted it to be re-signed, re-dated, updated
3 financials by pay stubs, bank statements --

4 THE COURT: Yeah, we're not going to do that.

5 MS. TIRELLI: -- a new letter of contribution. Your
6 Honor, it's just -- there's a lot of time and effort in this
7 case.

8 THE COURT: So I think people understand if you ask
9 for 2011 tax returns for whatever reason. Frankly, I don't
10 need to know, so I'll stay out of that.

11 MS. TIRELLI: Right.

12 THE COURT: But and if it's done reasonably promptly,
13 it's in everyone's interest to not go backwards. So I don't
14 want to have a whole new package based on that. So what is it
15 that you still need for HSBC?

16 MS. TUROFSKY: Your Honor, I have reached out to my
17 client and I have asked them what they need. So they are
18 asking for updated information in continuity of their file. So
19 they are asking for updated pay stubs for the borrower. The
20 last one that they have received is June 27th, I'll just say
21 for the record, and we'll take your lead, Your Honor. Whatever
22 you advise. Updated pay stubs for the contributor. The last
23 one they have is June 15. Updated bank statements for a couple
24 of bank statements. And just the re-signed contribution letter
25 with an updated date.

1 They just asked me for the information in
2 reference -- the documents for continuity for their files. But
3 we will take direction from the Court and advise our clients.

4 THE COURT: Okay. You can tell them we're not doing
5 that. I don't know what "continuity for files" means. I
6 suspect it means you want to have the most updated things.

7 MS. TUROFSKY: Updated, yes.

8 THE COURT: But we're talking about things that were
9 submitted in June and then they were asked for tax returns and
10 they were given in early August. I'm not going to require
11 people to re-sign and re-date things. And I think if they
12 follow the counsel that you give them, they will do quite well,
13 and we'll get where we need to go.

14 MS. TUROFSKY: Yes, Your Honor.

15 THE COURT: So you can certainly pass that along.

16 MS. TUROFSKY: Absolutely.

17 THE COURT: You know what you're doing.

18 And so, again, it sounds like you're awfully close
19 and it's in everybody's best interest to see this process to
20 conclusion. So we're going to make that happen.

21 MR. FAY: Your Honor, a list we handed over to
22 debtor's counsel is relatively minor, Judge, but \$2,400 is
23 being held in escrow, and I'm concerned about that, especially
24 when we have \$74,000 in unsecured creditors. Right now, it's
25 \$1,000 a month for a total of 60,000 for the plan. And the

1 plan will be amended in the future, Judge, but this is one of
2 those older cases where that was the practice. Hopefully, that
3 will be amended and the trustee will get the disposable income.

4 THE COURT: All right. Well, we'll hope to get this
5 done first, and then --

6 MS. TIRELLI: Correct.

7 THE COURT: -- we'll -- and it's a 2019 case, right?

8 MR. FAY: Yes, Your Honor.

9 THE COURT: So, all right.

10 MS. TIRELLI: Correct.

11 MR. FAY: It's February 2019.

12 THE COURT: All right. So I trust that we'll get an
13 answer with the HSBC situation soon and then right after that,
14 we'll address the issues you can raise.

15 MR. FAY: Your Honor, I just want to be clear, Your
16 Honor, as to what the Court's view is. I thought we had an
17 understanding that this \$2,400 - the practice of holding monies
18 in escrow for post-petition payments --

19 THE COURT: Oh, I'm -- yeah. No, we shouldn't do
20 that unless there's actually been something filed that calls
21 into question the validity of the actual noteholder. And so if
22 there's an adversary, there's a claim objection, but as a
23 general practice, no, we -- that should -- that money should
24 come out of escrow.

25 MR. FAY: I'll wait for that amendment, Judge.

1 MS. TIRELLI: Well, Your Honor, if I may. The last
2 time that I think that this brought up with the Court, the
3 Court did recognize that there's a lot of pieces out there that
4 would, you know, require --

5 THE COURT: Yeah, no. I'm not casting any
6 aspersions.

7 MS. TIRELLI: -- and I can't change everything.

8 THE COURT: You're catching up and --

9 MS. TIRELLI: Right. I'm catching up. And the fact
10 that the foreclosure was overturned on appeal I think gives us
11 plenty of reason, but I can't file any litigation because we're
12 in loss mit. So the money is safe. It is in escrow. I can
13 certainly give the trustee an accounting. And it's either
14 going to go to help maybe put a down payment towards this, you
15 know, loss mit. I'm sure the bank would appreciate not having
16 a 10-percent haircut. Or, if not, it will be turned over to
17 the trustee.

18 THE COURT: Well, also at this point, it --

19 MS. TIRELLI: It says that in the plan.

20 THE COURT: -- the money would otherwise go to the
21 secured creditors is my understanding.

22 MR. FAY: That's correct, Judge.

23 THE COURT: And they're in the middle of trying to
24 work things out. So in this particular case, I don't want to
25 raise the degree of difficulty any more than it currently is.

1 So we'll put in a pin in that for the next time we get
2 together. All right.

3 MS. TIRELLI: Okay. Thank you, very much, Your
4 Honor. And when --

5 THE COURT: All right. So date 11/6?

6 MS. TUROFSKY: 11/20?

7 THE COURT: 11/20?

8 MS. TIRELLI: 11/20, maybe?

9 THE COURT: All right. 11/20 it is.

10 MR. FAY: 11/20. Thank you, Judge.

11 THE COURT: Thank you.

12 MS. TIRELLI: Thank you, very much, Your Honor.

13 MS. TUROFSKY: Thank you, Your Honor.

14 (Concluded at 11:35 a.m.)

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